



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 30, 1994

Mr. Mark E. Dempsey  
Assistant City Attorney  
City of Garland  
P.O. Box 469002  
Garland, Texas 75046-9002

OR94-630

Dear Mr. Dempsey:

You asked if certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. That request was assigned ID# 28660.

The City of Garland ("the city") received a request for a police department offense/incident report relating to a child's near drowning at the city pool. The city contends that this information is excepted from disclosure under section 552.103(a) of the Government Code. To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You indicate that the individual who requested the report works for an attorney. You state that in a conversation with that attorney you confirmed that he is representing the family of the child. Your letter states that these facts are "sufficient to establish a likelihood of litigation between the child and the City arising out of the . . . incident."

Chapter 552 prohibits a governmental body from inquiring into the motives of a person requesting records. Gov't Code § 552.222. All requests for information must be treated uniformly without regard to the position or occupation of the person making the request or the person on whose behalf the request is made. *Id.* § 552.223. Therefore, the motives of a requestor are not relevant to an inquiry under Chapter 552. Open Records Decision No. 542 (1990) at 4. In Open Records Decision No. 361 (1983), we determined

that litigation was not reasonably anticipated where an applicant who was rejected for employment hired an attorney and that attorney sought information about the reasons for the rejection as part of his investigation. In Open Records Decision No. 452 (1986) at 4, this office stated:

Litigation cannot be regarded as "reasonably anticipated" unless there is more than a "mere chance" of it -- unless, in other words, we have concrete evidence showing that the claim that litigation may ensue is more than mere conjecture. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. [Citations omitted.]

Since you have presented no other facts that indicate litigation is reasonably anticipated, the city has not met its burden of showing that litigation is reasonably anticipated. Therefore, the city may not withhold the requested information. We are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Government Section

RHS/rho

Ref.: ID# 28660

Enclosures: Submitted documents

cc: Mr. Eric Lam  
Legal Administrator  
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4560 Beltline Road, #368  
Dallas, Texas 75244  
(w/o enclosures)